

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, APRIL 22, 2005  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Ms. Kathryn Inouye  
Mr. Toby Martyn

Mr. Timothy Johns  
Mr. Ted Yamamura

**STAFF**

Mr. Harry Yada, Land  
Mr. Paul Conry, DOFAW  
Mr. Richard Rice, DOBOR  
Mr. Eric Hirano, ENG

Mr. Sam Lemmo, OCCL  
Mr. Francis Oishi, DAR  
Mr. Kevin Yim, DOBOR  
Mr. Mike Shinozuka, DOT

**OTHER**

Ms. Linda Chow, Deputy Attorney General  
Mr. Russ Saito, K-2  
Mr. Tom Troland, D-6  
Pastor Hoover, D-8  
Mr. John Derby, D-8  
Ms. Kim Hum, F-3  
Mr. Chad Durkin, D-12  
Mr. Paul Strauss, D-11  
Mr. Don Clegg, K-3  
Mr. Don Russell, K-3  
Mr. Walt Wrzesniewski, K-3

Ms. Diana Bertsch, E-1  
Mr. Russell Kauku, D-8  
Mr. Jack Kleeper, D-8  
Ms. Adella L. Johnson, D-14  
Mr. Scott Atkinson, F-3  
Ms. Joan Nagum, D-11  
Ms. Mary Hall, D-11  
Mr. Mike Teterling, K-3  
Mr. Jack Lockwood, K-3  
Mr. Joe Freschner, K-3

Ms. Julie Kimura Walker, K-3  
Mr. Richard Clifton, K-3  
Mr. Charles Toguchi, J-1

Ms. Maureen Schafer, K-3  
Mr. Joe Correa, K-3  
Ms. Dale Wong, J-1

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1: Minutes of April 1, 2005**

**Deferred, No Quorum**

**Item K-2: Conservation District Use Application (CDUA) OA-3216 to Construct the Anuenue Radio Facilities Consisting of One (1) 70-Foot Telecommunication Tower with 22 Antennas and a 1,828 Squarer Foot Equipment Building.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known the proposed site is at an elevation of 640 feet on the south slope of Koko Head located in eastern Oahu. The purpose of the project is to install a modern high capacity digital interconnect to replace the Rainbow analog radio channels used by various agencies. The digital interconnect will facilitate voice, digital radio, video, and data communications. Mr. Lemmo noted a Special Management Area Use Permit for this project was approved on March 16, 2005. Subsequently a public hearing was held at Koko Head District Park and the OEQC's Environmental Notice published a Finding of No Significant Impact to the environment. Mr. Lemmo went on to say the proposed facility will support the rebuilding and modernization of a shared State and Federal microwave system owned by the State Department of Accounting and General Services (DAGS) Information and Communication Service Division (ICSD). In addition, the Anuenue Radio Facilities will support the State of Hawaii Department of Health Emergency Medical Services Systems Branch, the City and County of Honolulu, the US Coast Guard, and Federal law enforcement agencies. The facilities will also be used to support the public safety radio system. Upon the completion of the new facilities the existing City and County's four towers and buildings will be removed. In addition, seven existing above ground utility poles will be removed and the electrical utilities will be relocated underground. Mr. Lemmo recommended the Board approve the Anuenue Radio Facilities located at Koko Head, Maunaloa, island of Oahu subject to the conditions listed in staff's submittal.

Russ Saito from the Department of Accounting and General Services noted his agreement with the proposed changes to staff's recommendation.

**The Board amended the Recommendation Section as follows:**

**1. Delete Recommendation 2)**

~~[The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents for any interference, nuisance, harm or hazard relating to or connected with the~~

~~implementation of corrective measures to minimize or eliminate the interference, nuisance, harm or hazard;]~~

2. Recommendation 7)

**“The applicant shall take appropriate measures to mitigate the impacts of erosion and siltation, and prevent oil, fuel, or cement products from falling, blowing, or flowing on Conservation lands and ocean waters. ~~[All work]~~ Grading and earth work will be scheduled during periods of low rainfall.**

3. Recommendation 15)

**“The tower ~~[shall be camouflaged to blend in with the surrounding skyline]~~ will have a dull gray colored galvanized coating, which is visually non-intrusive, and the microwave antennas will be a neutral gray or can be painted a color recommended by DLNR.**

4. Recommendation 16)

**“Co-location shall be encouraged ~~[where technically feasible]~~ between State, City, and Federal public agency users into one building and onto one tower; commercial or non-emergency users will not be included.”**

Unanimously approved as amended (Inouye/Yamamura).

**Item E-1: Request from the World Triathlon Corporation to Use the Hapuna Beach State Recreation Area in South Kohala, Hawaii, for the 2005 Honu Half Triathlon.**

Harry Yada, Acting Administrator for the Land Division briefed the Board and recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the 2005 Honu Half Ironman subject to the conditions listed in staff’s submittal.

Diana Bertsch, representing the World Triathlon Corporation informed the Board they typically secure insurance of one million dollars per incident for these types of events. When questioned by the Board on rental fees for other triathlon events, Ms. Bertsch indicated the amount paid varied by location. She also let it be known that her organization will be responsible for the cost of any additional staff time incurred.

**The Board amended the Recommendation Section as follows:**

1. Recommendation 2)

**“The Permittee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Special Use Permit, commercial general**

**liability insurance, in an amount of at least [~~\$500,000~~]-\$1,000,000.00 per [~~for each~~] occurrence [~~and \$1,000,000 aggregate,~~] with an insurance company or companies licensed to do business in the State of Hawaii . . .”**

**2. Recommendation 3)**

**“The permittee shall pay a rental fee of one hundred dollars (\$100.00) per day for the Pre-Event setup, the Event and the Post-Event breakdown and cleanup and for any State staff time required;”**

**Unanimously approved as amended (Inouye/Yamamura).**

**Item D-2: Amend General Lease No. S-5522, directly issued to The Storybook Theatre of Hawaii, Lot 21-A, Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, (Kona), Kauai, TMK: (4) 1-9-5:41.**

Mr. Yada communicated that The Storybook Theatre of Hawaii is requesting to amend the terms of their lease to allow the lessee to mortgage the leasehold subject to the standard mortgage clause. Mr. Yada recommended the Board amend General Lease No. S-5522 by replacing Condition #20 with the standard mortgage clause of the general lease form.

David Hamil, representing Storybook Theatre was present.

**Unanimously approved as submitted (Inouye/Martyn).**

**Item D-6: Termination of Revocable Permit No. S-7139 to Big Island Radio; Issuance of Revocable Permit to Skynet Hawaii, LLC, for Radio Tower Site at Kalaoa, North Kona, Hawaii, TMK: (3) 7-3-49:38.**

Mr. Yada disclosed the subject four acre parcel is located mauka of the Queen Kaahumanu highway and directly mauka of the Kona international airport, adjacent to the Hawaiian Electric Light Company (HELCO) power plant. He noted the request to terminated then reissue the existing lease is being made due to the sale of Big Island Radio to Skynett, Hawaii, LLC. Mr. Yada recommended the Board authorize the termination of Revocable Permit No. S-7139 to Big Island Radio and the issuance of a revocable permit to Skynet Hawaii, LLC., covering the subject area for radio tower for synchronous transmitters and accessory building site purpose.

Tom Troland, owner of Skynet Hawaii indicated he purchased the subject property within the past year for \$75,000 and appropriated monies of \$340.00 in his budget for rent. He pointed out that today staff is increasing the current rent on the property from \$340.00 to \$1,500.00 per month. Mr. Troland acknowledged Skynet Hawaii provides the County of Hawaii, Civil Defense with hundreds of minutes a year for public information and would like the Board to consider that factor when calculating the amount of the monthly rent. Mr. Troland felt a monthly rent of \$340.00 is more realistic.

The Board questioned Mr. Yada if they are able to approve the revocable permit today while allowing Mr. Troland the opportunity to go through arbitration to address the rent issue. Mr. Yada pointed out appraisals for revocable permits are usually done in house and do not go out. He went on to disclose the rent amount of \$340.00 was based on the fact that Big Island Radio provides a public service by broadcasting Civil Defense messages. After discussion with the County of Hawaii, it was disclosed that various radio companies on the island of Hawaii compete for the opportunity to broadcast the Civil Defense information and by allowing Skynet a reduce rent based on this specific claim of public service would be viewed as the Board favoring Skynet over other companies.

The Board asked Mr. Troland if he would be agreeable to the appraisal of the rent being conducted by a third party with him bearing the cost of this appraisal. Mr. Troland told the Board he hopes the rent will be set a \$340.00 and agreed to a third party appraisal hoping somewhere down the line he'd be able to argue his case.

**The Board amended the “Monthly Rental” by instructing the Department’s in-house appraiser to work with the applicant, who will provide additional information for similar types of facilities. If a mutual agreement were reached the terms would be subject to approval by the Chairperson. If an agreement can not be reached, an independent third party appraisal will be hired with the fee to be paid by the applicant.**

**Unanimously approved as amended (Inouye/Martyn).**

**Item D-8: Dispute of Rent – Cancellation of Revocable Permit No. S-4350 and Issuance of New Revocable Permit to Hawaii Conference Foundation, Lalamilo, Puako, South Kohala, Hawaii, TMK: (3) 6-9-02: 7, 8, 9, 10.**

Mr. Yada reminded the Board at its November 14, 2002 meeting the Board considered a request to terminate Revocable Permit No. S-4350 and issue a new revocable permit to Hawaii Conference Foundation for an expanded area. The prior submittal set the rent at “gratis” while the new permit set the rent amount “to be determined by the Chairperson” subject to review of the cost of restoration and operation of the historical church by the lessee. Mr. Yada acknowledged after completion of the review, staff appraiser concluded an in-house appraisal of seventeen (17) months of free rent and a monthly rent of \$900.00 thereafter. Staff has brought this matter before the Board as an appeal process as the applicant feels the rent should be “gratis” or “nominal” consistent with the previous revocable permit. The applicant stresses they are a qualified non-profit entity pursuant to Chapter 171-43.1. Mr. Yada recommended the Board confirm its action taken at its meeting of November 15, 2002 and uphold the staff appraiser’s in-house valuation of 17 months of free rent commencing November 15, 2002 and \$900 thereafter. Russell Kauku, Chair of the Board of Trustees of the Hawaii Conference Foundation came forward to provide testimony. He let it be known the Hawaii Conference Foundation is the support organization and business arm of the Hawaii Conference United Church of Christ. Mr. Kauku told the Board the subject property is historical in both time and use for the Hawaii Conference United Church of Christ. He went on to give a brief history of the establishment of the church in 1860. Mr. Kauku communicated that their position with respect to the subject property is that the rights to use and to acquire ownership of the property predates the territory of

the State of Hawaii. With regards to the rent, Mr. Kauku would like rent to remain gratis but if the Board moves ahead and assess a rent of \$900.00 they would have to considering asserting some legal positions, which they prefer not to do if possible.

Pastor Hoover indicated the church is the last symbol of the old fishing village that was in the community in Puako. He indicated the church can legally only sit fifty (50) people according to the fire marshals therefore it is not a revenue making enterprise and is therefore subsidized (20% of its budget) by the denomination. Over the years there have been over twenty (20) groups including the Department of Land and Natural Resources that have used the building as a community meeting and gathering place. Pastor Hoover feels it is inconceivable for another organization to be able to use the buildings as a means of generating funds to pay a rent of \$900.00 month. He let it be known the church is absorbing the cost to convert the cesspool to a septic system, which they estimate to cost \$35,000. Also the congregation will be replacing its church's tower due to dry rot at an estimated cost of \$20,000. In terms of the rent proposed, Pastor Hoover noted it would be inconceivable for the congregation to assume this burden.

The Board questioned whether the Church was listed on the State's Historic Registry. Mr. Kauku did not believe the church was on the registry but noted it was old enough to be included. As to the ownership of the structures on the parcel, Mr. Kauku believes the Hawaii Conference Foundation is the owner as well as the caretaker of the subject building. Mr. Kauku told the Board the Church is open to the public for use but they have a restriction on uses that are not consistent with Christian practice and worship.

Jack Keepler, Vice Chairman of the Board of Trustees communicated the increase in rent from "gratis" to \$900 a month would be a very historic event. He told the Board staff views the subject property as an investment property but the congregation views it as a historic vestige of a past time and they feel the property is golden and is equalivent to other palaces held by the State. Mr. Keepler feels Hokuhoa United Church should not be viewed as a source of potential revenue. When determining the rental amount, staff should have given a discount based on the social services, community building and development services that the church provides to the kingdom of Hawaii, the territory of Hawaii and the State of Hawaii for move than a hundred fifty (150) years.

When asked by the Board if there was an amount of nominal rent they'd be able to afford, Mr. Keepler responded a dollar and love. Mr. Kauku went on to say they could afford a nominal rent. He let it be known they have churches that have paid rent to other organizations and private property owners for use of their area but he believes paying rent on the subject area will set a legal precedence. Mr. Keepler believes at the subject property there is an entitlement not to pay rent.

John Derby, Executive Secretary of Hawaii Conference Foundation testified that the Hawaii Conference Foundation is willing to go through the process of deeming the structure a historic site.

Mr. Kauku asked the Board for some time to determine the "true amount" of nominal rent the church would be able to afford.

The Board asked Mr. Kauku to look into what sorts of limitations and obligations placing the church on the historical registry would have on their organization.

Written testimony was received from George Robertson.

**Motion to defer.**

**Unanimously approved to defer (Inouye/Martyn).**

**Item D-14: Forfeiture of Revocable Permit No. S-6253, Adella Johnson, Permittee, Kahana, Oahu, TMK: (1) 5-2-2: Por. 1.**

Mr. Yada informed the Board since 1991, staff has been working with the permittee to post the required liability insurance for Revocable Permit S-6253. On various occasions since 1992, staff has issued notices of defaults. The subject property is located within Kahana State Park and is encumbered by Governor's Executive Order No. 3518. In addition to Revocable Permit S-6253 the permittee also holds General Lease S-5291 because the permittee's house is half on and half off the lease lot. State Parks has been trying over the years to obtain the services of a licensed land surveyor to complete the field survey, obtain City subdivision approval and file a Land Court petition. Mr. Yada recommended the Board authorize the cancellation of Revocable Permit No. S-6253 subject to the conditions listed in staff's submittal.

Mr. Yada revealed he received a letter dated April 21, 2005 from Matthew Len, Agent at Mutual Underwriters confirming that he is currently in the process of securing a liability insurance policy for Adella Johnson's residence.

Member Martyn left the meeting and Member Johns arrived at 10:20 a.m.

Adella L. Johnson, the permittee came forward to testify. Ms. Johnson told the Board she has been working very hard through various means to obtain liability insurance. She communicated she has not been able to designate which lot her home occupies which has resulted in difficulty obtaining insurance coverage. She pointed out in the past the City of Honolulu Tax Office has sent her a property tax bill for three lots. Ms. Johnson feels until a surveyor can determine the metes and bounds it will be very difficult for her to obtain liability insurance.

The Board questioned how difficult it would be for Ms. Johnson to obtain insurance coverage on a property where the area is not clearly defined. Staff pointed out it could be difficult to obtain insurance coverage but noted with regards to the property line a mistake was made twenty (20) years ago and they are in the process of correcting this mistake.

Staff noted that the boundary for the subject property has to be corrected as an error was made twenty (20) years ago.

**The Board asked staff to clarify whether or not insurance companies would be able to cover the subject parcel.**

**Motion to defer.**

**Unanimously approved to defer (Inouye/Johns).**

**Item F-3: Request for Final Approval to Amend Hawaii Administrative Rules Chapter 13-37, Old Kona Airport Marine Life Conservation District, Hawaii; Chapter 13-58, Kona Coast, Hawaii; and Chapter 13-60.3, West Hawaii Regional Fisheries Management Area, Hawaii.**

Francis Oishi, Acting Administrator for the Division of Aquatic Resources (DAR) confirmed that public hearings were held and the majority of the public was in support of the rule changes. The only objections to the rules were from the commercial aquarium fishermen that were concerned with problems they were having with regards to conducting their operation (vandalism). Mr. Oishi noted they would be working with the enforcement division to deal with this problem and would also encourage the community to place their bottom fishing letter/number on their boat. Mr. Oishi went on to state what each of the rules covered: Chapter 13-37 the only change in the rule is the allowance for harvesting of sea urchins as well as authority for the Board to established a temporary moratorium on collection should over harvesting occur; Chapter 13-58 these amendments clarifies the boundaries for enforcement purposes; Chapter 13-60.3 provides additional requirements for commercial aquarium fish collection and increase regulations on lay nets or stationary gill nets. Mr. Oishi recommended the Board approve all proposed amendments for all three Hawaii Administrative Rules in Chapters 13-37, 13-38 and 13-60.3.

Kim Hum, from the Nature Conservancy voiced her support of the proposed rule changes.

Scott Atkinson, of the Community Conservation Network submitted written testimony and also voiced his support of all the proposed rule changes.

Written testimony was received from Tina Owens.

**Unanimously approved as submitted (Johns/Inouye).**

**Item F-1: Request for Approval to Amend/Extend Two Contracts with the University of Hawaii (UH) From July 1, 2005 through June 30, 2006 for The Hawaii Fish Aggregating Device System (Contract No. 47471) and Improvement of Bottomfish Stock: Phase III (Contract No. 47261).**

**Unanimously approved as submitted (Johns/Yamamura).**

**Item F-2: Request for Approval to Amend the Scope of Work and Provide a 7-Month No Cost Extension (To December 31, 2005) for Contract No. 53058 with the University of Hawaii (UH) to Develop a Statewide Aquatic Wildlife Conservation Strategy.**

**Unanimously approved as submitted (Johns/Yamamura).**



**Item M-1: Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key No. 1<sup>st</sup>/9-1-14:24 (Portion).**

**Item M-2: Issuance of Lease to Federal Aviation Administration (FAA), United States of America (USA) at Honolulu International Airport.**

**Item M-3: Amendment No. 1 to Lease No. DOT-A-03-0001, Traveler Services Concession Lease, Lenlyn Limited, dba ICE Currency Services USA, Honolulu International Airport.**

**Unanimously approved as submitted (Johns/Yamamura).**

**Item D-12: Issuance of Right-of-Entry Permit to Natural Systems, Inc. for Institutional Phytoremediation of the Ala Wai Canal Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-7-36:02-B (Ala Wai Canal).**

Mr. Yada announced that Natural Systems, Inc is seeking a right-of-entry to conduct a study, which uses phytoremediation as a means of improving water quality and clarity due to a reduction in the levels of nitrogen, phosphorus, algae and pathogenic bacteria in the Ala Wai Canal. Staff brought this item to the Board for approval because they believe the Board should approve this request as the Ala Wai Canal has existing encumbrances and it is unclear whether the Division of Boating and Ocean Recreation has jurisdiction over the canal. Mr. Yada recommended the Board authorize the issuance of a one (1) year right-of-entry permit to Natural Systems, Inc. covering the subject area under the terms and conditions of the submittal and to also waive the right of entry fee.

Responding to a letter from Carroll Cox stating his belief that the project is not exempt under Chapter 343, as this is not only a research project but also a commercial activity, Mr. Yada let it be known he does not know of any products being sold.

Chad Durkin, project manager for Natural Systems, Inc testified before the Board. Mr. Durkin told the Board the proposed project is a demonstration project as the experimental research portion was done at several other sites. Mr. Durkin announced that the subject demonstration is part of a biotechnology program that receives funding from the USDA. The oceanographic lab at the University of Hawaii, Food Quality Analysis Lab, Oceanic Analytical Laboratory will do the test results and Mr. Durkin himself who is a biologist will be conducting NC2 monitoring. Mr. Durkin's hopes for the project is that the Department of Health will adopt this technology as a best management practice for areas impacted by non-point source pollution. He made the Board aware that he has requested additional funding from USDA to purchase NC2 probes, which will monitor water quality for turbidity.

The Board questioned Mr. Durkin if the plants used in the demonstration project will be used as a commercial product. Mr. Durkin pointed out the rafts used in the project are being supplied by Marine Agritech, Inc and they have plans in the future to commercialize the plant raft as an agricultural product but for this specific project no funding or plans have been made for

commercial use. He told the Board if a restriction was placed on his permit, which would not allow any commercial use, he'd be okay with that restriction. Upon completion of the project Mr. Durkin will remove all materials used in the demonstration project.

Mr. Lemmo suggested Mr. Durkin consult with the seven or so canoe clubs that use the subject area.

Written testimony was received from Carroll Cox.

**The Board amended the Recommendation Section to add the following**

- 3. Staff shall work with the applicant regarding conditions for removal of all equipment used in the demonstration project.**
- 4. No Commercial Activities.**
- 5. At the end of the project all research results that are not proprietary shall be released to the Department of Land and Natural Resources.**
- 6. The applicant shall continue to work with the various canoe clubs to address potential user conflicts.**

**Unanimously approved as amended (Inouye/Johns).**

**Item D-11: After-the-Fact Consent to Sublease portions of General Lease No. S-4825; Waikiki Community Center, as Sublease, to Waikiki Health Center, Waikiki Beach Chaplaincy, Inc., International Church of the Foursquare Gospel, Hawaii Services on Deafness, United Self Help, and Boys and Girls Club of Hawaii, Hawaii non-profit corporations, as sublessees, Cancellation of General Lease S-4825, and Issuance of a 30-year Direct Lease to Waikiki Community Center for Community Center Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-6-25:08.**

Mr. Yada communicated the subject property was acquired by the State in 1981 to establish a community center in Waikiki. The current lease on the subject property is set to expire on March 31, 2007. Over the years, the Waikiki Community Center has subleased portions of the facility to various non-profit organizations. Some of the subleases have not obtained prior Board consent so today the applicant would like to resolve these matters and is requesting the Board consent to those various subleases. Based on fact the property was acquired as a community center, staff feels issuing a new lease is in the best interest. Mr. Yada informed the Board the applicant has received pledges from various charitable trusts to fund needed capital improvements of the building subject to the lessee obtaining a new long-term lease. Mr. Yada recommended the Board Consent to the past and present subleases, authorize the mutual termination of GL S-4825, find that the public interest demands the issuance of a new direct lease to the Waikiki Community Center and authorize the issuance of a direct lease to the

Waikiki Community Center covering the subject area under the terms and conditions listed in staff's submittal.

Joan Nagum, Executive Director of the Waikiki Community Center spoke in support of acquiring a new lease on the subject property. Ms. Nagum told the Board if fair market rent is assessed it would prove difficult for her organization to continue operation. She asked the Board to consider a "nominal" rent. Ms. Nagum let it be known if the rent is determined to be at fair market she would need to pass on this cost to the other non-profit users of the community center.

Paul Strauss, Executive Director of the Waikiki Health Center spoke of the positive relationship he has with the Waikiki Community Center. He went on to convey their efforts to service the community by providing vital services. He urged the Board to approve the submittal before them. Lastly, addressing the rent issue he let it be known this issue is of much concern as they are a non-profit organization leasing space from the Waikiki Community Center.

Mary Hall, a working mom and user of the facilities at the Waikiki Community Center let the Board know the important services provided at the center. She also acknowledges the ideal location of the center as well as the wonder staff it employs.

James Nishimoto, Chairman of the Board of Directors made it known the Waikiki Community Center is an oasis that provides a safe place to play, worship and receive health and human services. It provides parents with a place for them to leave their toddlers (daycare) while they work. Their vision is to be a multi-service neighborhood center that serves individuals and families who both live, work and visit the Waikiki community. In the future, Mr. Nishimoto envisions a greater initiative at the center which when in operation will prove to be an investment in the welfare of the community. To achieve these goals, Mr. Nishimoto hopes to receive accreditation of the daycare center on site, expansion of the adult care and the development of a youth/adolescence program similar to the YMCA model. He also spoke of his desire to improve the aging condition of the building. Lastly he asked the Board for a "nominal" rent to reflect the various non-profit agencies that provide services at the center.

**The Board amended the Annual Rent to \$156.00 per year.**

**Unanimously approved as amended (Inouye/Johns).**

**Item J-2: Issuance of Revocable Permit for Land-Based Operations in Support of an Ocean-Based Aquaculture Project to Kona Blue Water Farms, LLC, a Hawaii limited liability company, located at Honokohau Small Boat Harbor, Kealakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:003 (por.).**

**Motion to defer**

**Unanimously approved to defer (Johns/Yamamura).**

**Item K-3: Conservation District Use Application (CDUA) OA-3207 to Construct a Telecommunication Facility Consisting of One (1) FM Antenna, a Maximum of Two (2) Microwave Receiver Antennas, a 800 Square Foot Equipment Building and Subdivision of Land for Lease Purposes.**

Mr. Lemmo pointed out the project site area is owned by the State of Hawaii and is under the jurisdiction of the Division of Forestry and Wildlife (DOFAW) and is part of the Honolulu Watershed Forest Reserve. The proposed project site is located off of Tantalus Drive about one-half mile up a gated road that currently services two existing nonconforming Verizon facilities. The proposed project is being undertaken to relocate the existing Hawaii Public Radio (HPR) station transmitter from its present site on Palehua Ridge to the Tantalus site. According to the applicant, HPR has spend a great deal of time, money and effort to fix the problems associated with the present location at Palehua Ridge. Mr. Lemmo went on to say that over the past two years, HPR has been searching for a new site for HPR. Other tower owners that were contacted declined or asked exorbitant rent that would have overburdened the non-profit budget. HPR also evaluated placing their transmitter on the same tower as KHPR at Wiliwilinui Ridge, however there is no room for additional transmission. In reviewing this case, staff recognizes the importance to preserve scenic beauty in Hawaii for it's inherent value for residents and for Hawaii's economic base of tourism. Structures or other land use should not encroach into or penetrate public views of the ridges, summits or pu'u or physical features of the land. However, the proposed site has been previous disturbed and impacted. Under normal circumstances, Staff would have considered recommending approval of the proposed use however, DOFAW is the responsible land manager and they have gone on the record in opposition to the project. Mr. Lemmo recommended the Board deny the construction of a telecommunication facility and subdivision of land located at Pu'u Ohia, Tantalus.

Paul Conry, Administrator for DOFAW testified in favor of staff's recommendation. Mr. Conry stated use of the land to construct a telecommunication facility would mean removing land from watershed property. He let it be known there are other alternatives available to HPR then using the subject site. If an antenna was placed on the existing Verizon site, Mr. Conry would have no objections.

Don Clegg, representing HPR let it be known HPR is a community resource that is supported primarily by contributions from the Hawaii community and receives no support from the State. Mr. Clegg indicated the construction of a telecommunication facility would improve HPR's transmitter reception for the residents of Oahu by ninety-two (92) percent. At present only fifty (50) percent of the population can receive a clear and consistent signal. Mr. Clegg acknowledges DOFAW's mission to protect the forest reserve but it doesn't mean they should deny all activities. He pointed out various activities that already take place in the forest reserve (hiking, camping, commercial harvesting, etc). Mr. Clegg confirmed that HPR has looked at other possible sites but they have not found another site that provides adequate signal for Oahu. Lastly, Mr. Clegg acknowledged meetings with Verizon to co-locate at their site (not at Verizon's tower) but they'd like to have another option available should discussions fail.

Mike Teterling, General Manager of HPR testified. He communicated the purpose of HPR is to provide information to the public. In the beginning HPR was built with the intention of

providing transmission to all of Oahu (with the exception of the North Shore) but due to a certain circumstances (geographical alignment) HPR had to reduce their power. Over four years ago, HPR searched for an alternative site but the sites that could work were owned by commercial operations that charged an unattainable rent.

Don Russell, an Engineer at HPR told the Board if given approval to construct a facility at Tantalus HPR would be able to transmit a signal that could be received by all residents on Oahu (except Kaneohe and Kailua).

Jack Lockwood spoke in support of HPR's request to construct a telecommunication facility at Tantalus. Mr. Lockwood feels the construction of HPR's antenna at the subject location is the correct decision and provides an opportunity for the State to give assistance to HPR. He went on to detail the different programs and music available on KIPO.

Walt Wrzesniewski, a resident of Kahaluu spoke of the difficulty in receiving the transmission signal from KIPO at his home as well as office. Mr. Wrzesniewski spoke about some of the educational information KIPO has presented to the public.

Joe Freschner, Chairman of the Board of HPR testified. Mr. Freschner let it be known HPR operates exclusively for charitable, literary, educational and scientific purposes. He pointed out the construction of an antenna will not provide monetary value to HPR but will instead provide a community service to the public.

Maureen Schafer, a retired teacher spoke of what a wonderful resource HPR is to the community. Ms. Schafer believes KIPO radio station represents a choice and balance that allows all points of view to be heard. KIPO is the voice of the community and not a radio station that looks at increasing revenue.

Julie Kimura Walters, a landscape artist spoke in favor of relocating HPR's antenna. As a resident of Tantalus, Ms. Walters spoke of her frustration at not being able to receive KIPO's radio signal. She feels the construction of a new telecommunication facility will have minimal impact on the environment. In closing she asked the Board to support HPR's request to construct a new telecommunication facility.

Richard Clifton, a board member of HPR for the past fourteen (14) years made three observations which he passed on to the Board; 1) public interest tilts in favor of HPR's request; 2) public radio depends on its financial support from the community therefore they are highly sensitive to environmental concerns as their supporters are also concerned with the environment; 3) the Verizon site has some real advantages but he has some concerns with the visual impact of the towers and feels it will create negative feelings from the public.

Joe Correa who previously did work for Motorola maintaining towers informed the Board if a tower in Wiliwilinu Ridge is used (for this new antenna) and should additional work or maintenance be required in the future, the minimum cost to get a helicopter to fly someone there will cost \$1,000.00 so a site where access through a road is available would be a much better site.

The above item was deferred to later in the meeting.

**Item J-1: Requesting final approval of amendments to Chapter 13-234, Hawaii Administrative Rules, as they relate to cruiseship fee increases and requesting authorization to submit the approved rule to the Governor for final adoption.**

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) and Kevin Yim, Financial Officer at DOBOR appeared before the Board to testify. Mr. Rice reminded the Board the fees rule packet was first reviewed by the Board in 2001 and included rules that would affect both recreational and commercial fee increases. The Board approved the rules, which were then forwarded to the Governor for permission to proceed to public hearings. Both recreational and commercial rule amendments proceeded to ten public hearings which were held on Hawaii, Oahu, Maui, Kauai, Lanai and Molokai. Subsequent to the public hearings, the administration decided to review the entire packet. It was decided to extract his particular rule and forward it separately. The reasons for this are: 1) due to the increase in security required by the Federal government as of July 1, 2004, payment for necessary enforcement personnel is greater than the revenues generated from this industry to perform required enforcement, thereby depleting the Division of essential monies; and 2) there were no objections voiced at the public hearings to the proposed increases for cruiseships during the public hearing process. This rule increases the fee paid by cruiseships for embarking and disembarking passengers at a State small boat harbor facility. Mr. Rice noted the cruiseship industry wants assurance that the money generated goes back into the harbor. Mr. Rice recommended the Board adopt the rules as submitted and grant approval to forward the rules to the Governor for final approval on the proposed amendments to the Hawaii Administrative Rules.

The Board reminded Mr. Rice that the increase in fees could not exceed the needs of the cruiseships at the harbors. Mr. Rice acknowledged the division is not in perfect adjustment with regards to the income generated by the fees but he believes the work being done at the harbors exceeds the amount being collected. Mr. Rice assured the Board if they voted in favor of the submittal they will not be violating the Young Amendment.

Charles Toguchi, testifying on behalf of John Hansen, President of the North West Cruiseship Association (NWCA) recognizes a reasonable fee increase is necessary but he asked for assurance that the fees generated at a specific harbor will be used for that harbor. He believes the cruiseship should pay for their way, but would have preferred the increase in fees be done in steps. Mr. Toguchi went on to speak of the work that needs to be done at the Lahaina and Kona piers. He asked the Board to consult with the DOBOR to figure out what improvements will be done to the piers and the related cost and use those figures to determine the increase in cruiseship fees.

Dale Wong, Director of Communications for Norwegian Cruise Line and NCL America (NCL) read her written testimony, which was in opposition of the increase in, cruiseship fees. Ms. Wong let it be known NCL supports efforts to improve small boat harbors and ensure the safety of Hawaii's ports, but they strongly oppose the proposed amendments. Upon review of staff's report as well as conversations with DOBOR staff, NCL believes the increase in revenue

generated will be used to pay for improvements and services in various state boating facilities (and in other areas) that are wholly unrelated to NCL's use of those facilities. NCL pointed out at the public hearings DOBOR was asked to provide assurances that the money collected goes back into that harbor but the division has declined to specify how the increased revenues will be used. Given the foregoing, Ms. Wong believes the amendments fail to comply with federal statutory and constitutional law. In closing, Ms. Wong stated that NCL fully expects to fund its fair and reasonable share of the cost of services and facilities provided to NCL vessels, but it can not serve as a general financial resource for all state boating facilities and services.

When asked by the Board if she received assurance that the fees generated would go back to that specific harbor would she support staff's submittal, Ms. Wong replied she'd be in support of the proposed rule amendments.

**The Board amended the Recommendation Section by adding:**

- 3. Before the rules are forwarded to the Governor for final approval, Division of Boating and Ocean Recreation shall provide the Board a report on their compliance with all Federal laws, specifically the federal Rivers and Harbors Appropriation Act of 1884 so the Board can be assured the Department is in compliance with regards to the projected revenues and how the revenues are used.**

**Unanimously approved as amended (Johns/Inouye).**

The Board took a break at 12:50 p.m. and resumed the meeting at 1:00 p.m.

**Item K-3: Conservation District Use Application (CDUA) OA-3207 to Construct a Telecommunication Facility Consisting of One (1) FM Antenna, a Maximum of Two (2) Microwave Receiver Antennas, a 800 Square Foot Equipment Building and Subdivision of Land for Lease Purposes.**

(continued from earlier in the meeting)

**The Board amended the Recommendation Section as follows**

**"That the Board of Land and Natural Resources [~~DENY~~] approve the construction of a telecommunication facility and subdivision of land located at Pu'u Ohia Tantalus, island of Oahu [~~due to the objections of the Division of Forestry and Wildlife.~~] subject to the following conditions:**

- 1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawaii Administrative Rules.**
- 2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant,**

its successors, assigns, officers, employees, contractors and agents for any interference, nuisance, harm, or hazard relating to or connected with the implementation of corrective measures to minimize or eliminate the interference, nuisance, harm or hazard;

3. The applicant shall comply with all applicable Department of Health administrative rules.
4. Where any interference, nuisance, or harm may be caused, or hazard established by the use the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson.
5. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
6. Any work done or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
7. The applicant shall take appropriate measures to mitigate the impacts of erosion and siltation, and prevent oil, fuel, or cement products from falling, blowing, or flowing on Conservation lands and ocean waters. All work will be scheduled during periods of low rainfall.
8. All representations relative to mitigation set forth in the accepted final environmental assessment or impact statement, including responses to comments for the proposed uses are incorporated as conditions of the permit;
9. All exterior light fixtures must be shielded during construction and operations of the project;
10. In the event that unrecorded historical remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease immediately in the vicinity and the remains shall be protected from further damage. State Historic Preservation Division (692-8015) shall immediately be contacted;



11. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privileges;
12. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
14. Cleared areas shall be revegetated within thirty (30) days of grading or construction completion unless otherwise provided for in a plan on file with and approved by the department;
15. Any increase in broadcast power over fifty-two (52) kilowatts or the addition of users will be subject to Board approval;
16. Hawaii Public Radio shall allow co-location were technically feasible with the approval of the Board;
17. The site shall be landscaped with native vegetation pursuant to a plan approved by the Division of Forestry and Wildlife;
18. The applicant shall obtain a land disposition instrument from the Department by lease or other land use instrument;
19. The subject tower shall be painted to blend in with the existing environment;
20. In issuing this permit for the use of Forest Reserve lands, the Board recognizes the unique, non-profit, broad public service nature of telecommunication services that Hawaii Public Radio provides and the unique circumstances surrounding the application site;
21. Other terms and conditions as may be prescribed by the Chairperson; and
22. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Unanimously approved as amended (Inouye/Johns).

Item K-1: Enforcement File No. HA-05-21, Regarding Alleged, Unauthorized Grading, Grubbing, and Culvert Construction, Failure to Resolve Prior Land Uses on Privately-owned Land Located at TMK: (3) 5-5-008:067.

**Motion to defer**

**Unanimously approved to defer (Johns/Agor).**

- Item J-3: Issuance of Revocable Permit for Open, Unpaved Land to House a Refrigerated Container Used for Ice Making and Fish Packing to Fish Hawaii Yachting, Inc., a Hawaii corporation, dba Marina Seafoods, Located at Honokohau Small Boat Harbor, Kealahou, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:003 (por).**

**Unanimously approved as submitted (Johns/Yamamura).**

- Item L-1: Permission to Hire Consultants for Job No. B61XM82A, Kaunakakai Harbor Ferry System Improvements, Molokai and Job No. 500BH40A, Mitigation of Hazards at the Salt Water Pool on TMK: (3) 7-5-20: 16, Kona, Hawaii.**

- Item L-2: Approval for Award of Construction Contract – Job No. J00CF51A, Hawaii Nature Center ADA Barrier Removal, Honolulu, Oahu, Hawaii.**

**Unanimously approved as submitted (Johns/Yamamura).**

- Item C-1: Request Approval of Contract with Hawaii Modular Space to Furnish and Deliver A Mobile Office Trailer for the Division of Forestry and Wildlife, Natural Area Reserve System Section, Maui District.**

- Item C-3: Request for Approval to Enter into a Contract with Southwest Fence and Supply Company to Install Ungulate-Proof Perimeter Fence within the Helemano Drainage of the Koolau Mountains, Oahu.**

**Unanimously approved as submitted (Johns/Yamamura).**

- Item C-2: Request for Approval of Revised Contract with Medallion Hawaiian Hardwoods to provide professional services for the federally funded Rural Development Program for the Division of Forestry and Wildlife.**

**The Board amended page 1 of the contract to include Federal Grant No. 05-DG-11052021-071.**

**Unanimously approved as amended (Johns/Yamamura).**

- Item D-1: Withdrawal from Governor's Executive Order No. 2375 and Reset Aside to County of Kauai, Department of Water for Water Tank Purposes; After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes; and Issuance of Immediate Construction Right-of-Entry to County of Kauai, Department of Water; Kalaheo Homesteads, 1<sup>st</sup> Series, Koloa, Kauai, TMK: (4) 2-4-4: portion 5.**

**Motion to defer**

**Unanimously moved to defer (Inouye/Johns).**

**Item D-5: Forfeiture of General Lease No. S-4992, Frank O. Hay, Jr., Lessee, Lot 38, Kokee Camp Site Lots, Waimea (Kona), Kauai, TMK: (4) 1-4-4: 43.**

**The Board amended the Recommendation Section by adding the following**

**5. The lessee shall have until May 13, 2005 to remove the derelict forklift and if this condition is not complied with the lease shall be automatically terminated.**

**Unanimously approved as submitted (Johns/Yamamura).**

**Item D-13: Forfeiture of General Lease No. S-4948, Pearl City Youth Complex, Lessee, Pearl City, Waimano, Ewa, Oahu, TMK: (1) 9-4-19:35.**

**Motion to withdraw.**

**Unanimously approved to withdraw (Johns/Yamamura).**

**Item D-3: Amend Prior Board Action of December 12, 2003, Item D-38, Regarding the Holdover of Leases for Various Lessees, Kokee Campsite and Puu Ka Pele Park Lots, Waimea, Kauai, TMK: (4) 1-4-02, 1-4-03, 1-4-04.**

**Item D-4: Amend Prior Board Action of October 13, 2000 (Item D-2), Grant of Perpetual, Non-Exclusive Easement, and Issuance of Immediate Construction Right-of-Entry to County of Kauai, Department of Water, Affecting a Portion of State Owned land, Por. of Wailua, Kawaihau, Kauai, TMK: (4) 4-1-9: por.5.**

**Item D-7: Cancellation of Revocable Permit No. S-5611 to Jack Wong Yuen and Issue a Month-to-Month Revocable Permit to Kamilyon Inc. dba Wong Yuen Store for Access Purposes, Waiohinu, Kau, Hawaii, TMK: (3) 9-5-01: por.7**

**Item D-9: Amend Prior Board Action of July 30, 2004 (Item D-2), Consent to Sublease General Lease No. S-5284A, Hawaiian Cement, Lessee, to T.M.C. General Contracting, Inc., Sublessee, Wailuku, Maui, TMK: (2) 3-8-08: por. 31.**

**Item D-10: Rescind Prior Board Action of February 11, 2005 (Agenda Item D-3), Acquisition of Remnant County Lands and Set Aside to Department of Accounting and General Services for continued use as part of the Vineyard Street Garage Project, Honolulu, Oahu, TMK: (1) 2-1-18:Remnant.**

**Item D-15: Issuance of Revocable Permit and Right-of-Entry to Shoreline Restoration of Hawaii, Inc., Kapalama, Honolulu, Oahu, TMK: (1) 1-5-20:17.**

**Item D-16: Amend Prior Board Action of December 10, 2004, Agenda Item D-27, Annual Renewal of Revocable Permits on the Island of Hawaii, Maui, Molokai, Kauai, and Oahu.**

**Item D-17: Rent Review Methodology of Revocable Permits.**

**Unanimously approved as submitted (Johns/Yamamura).**

There being no further business, Chairperson Young adjourned the meeting at 1:17 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources